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IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

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LESLIE A. NEWMAN,)
Commissioner of Commerce and Insurance)
for the State of Tennessee,)

Petitioner,)

v.)

No. 07-1163-IV

NATIONAL FOUNDATION OF)
AMERICA, a Tennessee corporation,)
RICHARD K. OLIVE, an individual;)
SUSAN L. OLIVE, an individual;)
BREANNA MCINTYRE, an individual,)
KENNY M. MARKS, an individual,)
THEODORE S. LITTLE, an individual,)
HUNTER DANIEL, an individual,)
Respondents.)

VERIFIED PETITION FOR APPOINTMENT OF RECEIVER
FOR PURPOSES OF LIQUIDATION OF NATIONAL FOUNDATION OF
AMERICA; IMMEDIATE AND PERMANENT INJUNCTIVE RELIEF;
REQUEST FOR EXPEDITED HEARING

Petitioner, Leslie A. Newman, Commissioner of Commerce and Insurance for the State of Tennessee ("Commissioner" or "Department"), by her counsel, Robert E. Cooper, Jr., Attorney General of the State of Tennessee states as follows:

NATURE OF THE ACTION

1. This action requests this Court to grant a comprehensive legal and equitable remedy afforded by Tennessee's insurance receivership act to address the hazard to the public presented by the Respondents' illegal solicitation and issuance of unauthorized insurance.

Petition for Liquidation of National Foundation of America

contracts violating Tenn. Code Ann. § 56-2-105. Respondents' activities violate Tennessee insurance regulatory laws that are administered under the jurisdiction of the Tennessee Commissioner of Commerce and Insurance. The unlicensed, unauthorized and otherwise deceptive and unfair transactions by Respondent National Foundation of America ("NFOA") and the other Defendants managing NFOA and/or acting as its agents present an immediate danger to the public health, safety or welfare of Tennessee policyholders, and to the public of several other states. The business of NFOA, a nonprofit Tennessee corporation, is that of an unauthorized insurer, by which it issues purportedly charitable Installment Plan Contracts to mainly elderly customers in exchange for solicited "donations" of other valuable assets ceded by those customers, often representing substantial life savings. In substance, NFOA's contracts constitute annuities: single premium term-certain annuity contracts, guaranteeing either immediate or deferred future periodic payments to customers and their beneficiaries. NFOA has filed official papers with the State of Tennessee admitting these payments are made to "annuitants" for various terms. Such business requires licensure as an insurer in Tennessee, or appropriate exemption.

2. NFOA's activities are causing nationwide concern for states' insurance and financial regulators, and to insurers whose customers are exchanging assets for NFOA's unlicensed product, due to their impact on the public. NFOA claims to have tax-exempt status, whereas its exemption under Section 501(c)(3) of the Internal Revenue Code has not been determined by the IRS. It may never be possible to remedy the harms caused by NFOA's failure to have the exemption or to issue a lawful product with the features relied upon by people whose assets were transferred. Information obtained by the Department, from its own investigations and those of other states, indicates that NFOA causes, permits and exploits widespread ignorance

by the customers and intended customers about the transactions, such that many customers armed with true information would have avoided ceding their assets to NFOA for these long-term contracts. All of NFOA's business to date has been conducted without regulatory approval of the Commissioner, without guaranty fund protection, and without licensure as an insurer in any other state. Moreover, based on NFOA's activities to date, NFOA does not qualify for any regulatory approval from the Commissioner to be an insurer, or any other exemption from regulation allowed by law.

3. According to its own records, by April 20, 2007, NFOA had reflected over \$31 million of assets received from its customers in exchange for issuing over 233 contracts, just since late January 2006. NFOA has significantly less cash and investment account assets on hand, and has paid substantial business and other expenses out of the funds. Its future payment liabilities assumed through those contracts exceed, in dollar totals, the amount of assets it received, requiring trust that its assets will grow through future earnings. The Tennessee contracts and solicitations personally described by the customers to the Department's investigators, have occurred recently, since April 2007, whereas NFOA consummated many more contracts with residents of other states since January 2006. Other states have taken action to halt NFOA's business as unauthorized insurance and/or unauthorized securities issuance. The factually grounded and legally based conclusion presented by the Commissioner that NFOA is acting as an unauthorized Tennessee insurer violating Tenn. Code Ann. § 56-2-105 in and from Tennessee, makes insurance law remedies appropriate, and those are exclusive to this Court under Tenn. Code Ann. §§ 56-9-101, *et seq.* (The Insurer's Rehabilitation and Liquidation Act, "IRLA"). Thus, this is a formal proceeding seeking an order by this Court appointing the

Commissioner as statutory receiver to liquidate NFOA pursuant to Tenn. Code Ann. § 56-9-306 under IRLA.

4. This remedy to shut down and liquidate Respondent NFOA's business is required due to the extreme hazard which NFOA's unauthorized insurance business presents to the policyholders, beneficiaries, creditors and the public by unlicensed and renegade activities, and due to the rampant misrepresentations used by NFOA to market its purported installment agreement product. This remedy permanently enjoins its operators conducting its unlawful insurance business and issuance of fixed term annuity contracts in any way. Because NFOA is a Tennessee corporation, the Tennessee Commissioner desires to exercise her primary jurisdiction to act as the receiver of this unlawful insurer's entire business and assets, and to seek centralized injunctions which may be further enforced in other courts if necessary to obtain the injunctive relief and control afforded by the Act.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction of this insurance receivership action pursuant to Tenn. Code Ann. § 56-9-104, and venue of this action is properly established in the Chancery Court of Davidson County pursuant to Tenn. Code Ann. § 56-9-104(e).

THE PARTIES

6. The Petitioner, Leslie A. Newman, is the duly appointed Commissioner of Commerce and Insurance for the State of Tennessee. Pursuant to Tenn. Code Ann. §§ 56-9-101, *et seq.*, the rehabilitation, liquidation or conservation of a domestic insurance company is to be

conducted by the Commissioner after her appointment as receiver by the Court. Tenn. Code Ann. §§ 56-9-301, *et seq.*

7. Respondent NFOA was incorporated on January 27, 2006 as a nonprofit corporation organized under the laws of the State of Tennessee with an official address and principal place of business located at 1308 Buckingham Circle, Franklin, Tennessee 37064 (a residence). NFOA has been conducting the business of an insurer without any certificate of authority as more specifically described below. NFOA also maintains an office with staff at 1100 Mission Court, Franklin, Tennessee 37067. Richard Olive is the agent for service of process at the business address of 1308 Buckingham Circle, Franklin, Tennessee 37064. (*See* Affidavit of Fraud Investigator, Robert Heisse, Exhibit A hereto, NFOA corporate formation documents attached thereto as Heisse Exhibit B, and press release Exhibit G thereto). NFOA lists its fax and telephone numbers on promotional material as fax 615-791-8624, phone 615-791-8690. (Brochure, last page, ex. K to Heisse Affidavit.)

8. According to the Internal Revenue Service, by letter dated May 4, 2007, to the Department of Commerce and Insurance, it has no record that National Foundation of America is a tax-exempt organization under 501(c)(3) of the Internal Revenue Code by virtue of an approved application; therefore, the IRS has no documents to affirm the tax-exempt status of NFOA. (Heisse Affidavit, Ex. A, ¶12; IRS Letter, exhibit F thereto). NFOA filed an Application for Registration of a Charitable Organization with the Tennessee Secretary of State on January 26, 2007, indicating an intent to solicit donations. (Heisse Affidavit, Ex. A, ¶5). In its financial filings with the Tennessee Division of Charitable Solicitations and Gaming, NFOA has admitted to the State of Tennessee that it is making **annuity** payments to its clients, whom it refers to as

annuitants. It describes the persons to whom it pays scheduled monthly installment expenditures as "Immediate Annuitants", categorized under headings for 10-year term, 12-year term and 15-year term. (Heisse Affidavit, Ex. A, exhibit C thereto, NFOA Quarterly Financial Report as of June 30, 2006, filed July 31, 2006, detail of other program expenses, schedule "c"). The amounts paid listed next to the names of "Immediate Annuitants" are the same amounts as Mr. Heisse derived from the "Installment Plan Agreements" identified for individuals of the same name (A. Johnson, Erfle, Kuklis, Whitehead, Mahar, Manternach) (Heisse Ex. A; Schedule, Exhibit I).

9. NFOA does not have and has never had a certificate of authority issued by the Commissioner of Commerce and Insurance to engage in the business of insurance as an insurance company in Tennessee. (Affidavit of Robert Ribe, Chief Analyst, Department Insurance Analysis Section, Exhibit B hereto, ¶4). NFOA does not have and has not ever had a license to engage in the business of insurance as an insurance company in any state, according to the database of the National Association of Insurance Commissioners. (Ribe Affidavit, Ex. B, ¶5). NFOA does not have and has never had a statement on file regarding charitable gift annuities under the Charitable Gift Annuity Act, Title 56, chapter 52 of the Tennessee Code Annotated. (Ribe Affidavit, Ex. B, ¶3, 6). NFOA is claiming not to be conducting an insurance business subject to the jurisdiction of insurance regulators in this state, a position rejected by Petitioner.

10. Respondent Richard K. Olive is a trustee, President, and is listed as the Executive Director of Respondent NFOA and its agent for service of process. Respondent Richard K. Olive executes contracts on behalf of NFOA, promotes its contracts, and is actively concerned in all of

such business, as more specifically stated herein. Respondent Richard K. Olive is a citizen and resident of Williamson County, Tennessee, and maintains a residence at 1308 Buckingham Circle, Franklin, Tennessee 37064, which is the listed business address for NFOA. Richard K. Olive holds no license as an insurance producer in the State of Tennessee. *See*, Affidavit of Brenda Sechler, Agent Licensing Director of the Department's Insurance Division, Exhibit C, hereto, ¶4.

11. Respondent Susan L. Olive is the spouse of Respondent Richard K. Olive and is a Vice President, corporate secretary and listed trustee of NFOA, and acts in conjunction with Richard Olive in the operation and management of NFOA. Respondent Susan L. Olive is a citizen and resident of Williamson County, Tennessee, and maintains a residence at 1308 Buckingham Circle, Franklin, Tennessee 37064. Susan L. Olive holds no license as an insurance producer in the State of Tennessee. Sechler Affidavit, Ex. C, ¶6.

12. Respondent Breanna McIntyre is an employee of NFOA, on information and belief a citizen and resident of Williamson County, Tennessee, with an address at 1308 Buckingham Circle, Franklin, Tennessee 37064. Breanna McIntyre conducts various acts on behalf of NFOA and is a contact person for NFOA at NFOA's principal address, and at email address of Breanna@nationalfoundationofamerica.org. (Heisse Affidavit, Ex. A, ¶17; Press Release, exh. G thereto). Breanna McIntyre holds no license as an insurance producer in the State of Tennessee. Sechler Affidavit, Ex. C, ¶8. Additionally a person identified as Jenilee McIntyre, Executive Administrator of NFOA, has appeared on certain documents submitted on behalf of NFOA (Heisse Affidavit, Ex. A, ¶17) to solicit a change of ownership (see Imogene May Affidavit below, Exhibit H hereto).

13. Respondent Kenny Marks, or Kenny (Kenneth) M. Marks, is a Vice President of NFOA, on information and belief a citizen and resident of Williamson County, Tennessee, with a business address at NFOA at 1308 Buckingham Circle, Franklin, Tennessee 37064, with another possible address at 439 Essex Park Circle, Franklin, Tennessee 37069-8416. Kenny Marks appears in a video playable on the NFOA promotional website speaking on the topic of Securities Exchanges, under the title Vice President of NFOA. Kenny Marks holds no license as an insurance producer in the State of Tennessee (*See Supplemental Affidavit of Brenda Sechler, Exhibit C-1 hereto*). Kenny Marks is named as a Respondent because he is described as an officer of NFOA, and he is visibly involved in and carrying out the business and solicitations of the unauthorized business of insurance by NFOA with Richard Olive and others.

14. Theodore Stamps Little, is a Tennessee licensed insurance producer, resident at 7345 Hunting Camp Road, Fairview, TN 37062. Little is named as a Respondent because of his activities in soliciting unauthorized contracts for NFOA in Tennessee and to obtain injunctive relief, cooperation with the receiver, and notice to him. Little holds a license in Tennessee as an insurance producer, 7345 Hunting Camp Road, Fairview, Tennessee 37062, according to records of the Department. Little has consummated a contract of NFOA with a Tennessee resident that constitutes the sale and/or solicitation of unauthorized insurance in this State.

15. On information and belief, Respondent Hunter Daniel is a resident of Alabama, who has participated in acts within Tennessee to solicit and consummate unauthorized insurance in this State on behalf of NFOA. Daniel is named as a Respondent because of his activities in soliciting unauthorized contracts for NFOA in Tennessee along with Theodore Little and Richard Olive, and to obtain injunctive relief, cooperation with the receiver, and notice to him. Hunter

Daniel is not a licensed insurance producer in the State of Tennessee. Affidavit of Brenda Sechler, Exhibit C, ¶10. Hunter Daniel's address on information and belief is 1705 Big Cove Rd SE, Huntsville, Alabama 35801-2119, in Madison County, Alabama.

16. Respondents Richard Olive and Susan Olive, Breanna McIntyre and Kenny Marks, are individuals who carry out NFOA's day to day business, and/or are officers of the corporation. The Department so far knows of accounts of NFOA maintained at Wachovia Bank, NA, Franklin Royal Oaks branch, and at SEI Private Trust, 1 Freedom Valley Drive, Oaks, Pennsylvania 19458. On information and belief, Richard K. Olive and/or Susan L. Olive have control of NFOA's financial records and accounts, and some of the NFOA accounts at SEI Private Trust have been placed under the custody or control of an investment advisor, Mitchell S. Martin, III, for Stonebridge Investment Counsel, Inc. in Brentwood, Tennessee. (Hesse Ex. A; Exhibit J collective thereto, account statements). The account statements show NFOA maintains accounts in the Wachovia Bank, but the larger portion of NFOA's assets are maintained in SEI Private Trust Co., which is a federally chartered thrift. NFOA provided the Insurance Division of the Department with statements from their bank accounts maintained at Wachovia, NA and their investment accounts held at SEI Private Trust. These statements show that NFOA had \$2,105,486.82 in their business checking account with a sweep feature and a total of \$11,434,832.96 in the SEI Private Trust accounts as of March 31, 2007. (Hesse Affidavit, Ex. A, Attachments J-Collective). On information and belief, NFOA may hold other assets transferred from its customers, such as annuities, which have not converted to liquid assets. It will be necessary to notify SEI Private Trust Co., Stonebridge, and Mitchell Martin, about any restrictions or transfers of control of NFOA assets that may be imposed by this Court to

effectuate those orders, and about the pendency of this case as it may affect the accounts it holds for NFOA. Any liquidation of NFOA cannot be carried out without the full cooperation of Olives, McIntyre, Marks, its directors, agents, including but not limited to Little and Daniel, employees and officers, and any persons or institutions having control or custody of its assets. In addition to the injunctions being sought against the individual respondents, the individual Respondents are named party Respondents to effectuate the liquidation, and to assist in obtaining that full cooperation and adherence to the Court's injunctions.

**BACKGROUND: NFOA'S BUSINESS, ANNUITY CONTRACTS
SALES STRATEGY AND CUSTOMER INTERACTIONS**

17. Since NFOA's incorporation on January 27, 2006, it has transacted contracts known as Installment Plan Contracts which are and ought to be characterized as annuity contracts, funded by exchanging assets, securities, annuities, real estate proceeds, or other valuable consideration of its customers. See, Affidavit of Brian Hoffmeister, Department Life Compliance Analyst, Actuarial Services Section of Insurance Division, Exhibit D hereto.¹ (Also, affidavit of David Gerhart, Vice President and Associate General Counsel of American Equity Investment Life Insurance Company, Exhibit R hereto). These contracts have issued on the false and misleading premise that NFOA is a Section 501(c)(3) organization under the Internal Revenue Code. NFOA has insured its customers, hereinafter referred to as policyholders or annuitants, by issuing immediate and deferred term annuities for fixed contract terms. Annuities

¹ Certain attachments to the Hoffmeister affidavit, the Melba Prosser Affidavit, the Robert Sweigert Affidavit, and the Imogene May Affidavit contained social security numbers in the original because that information was obtained by NFOA and used in the asset exchanges. Individual original pages containing the numbers or certain other material to be redacted were retained by undersigned counsel and substitute copies filed with the court which redact the identifying material with the designation "Redacted" in its place. If the material is required by the Court, those original pages could be filed under seal.

are a type of policy required to be filed by life insurance companies in Tennessee with the Commissioner before they can be used or sold. Hoffmeister Ex. D; ¶3. The contracts are not in general measured by any lives of the donor or any other beneficiary.

18. NFOA's Installment Plan Contracts and papers reflecting NFOA's Tennessee contracts and proposals were never filed with the Department but have been reviewed, for purposes of this case, by the Life Compliance Analyst in the Actuarial Services Section of the Tennessee Insurance Division, Brian Hoffmeister. Hoffmeister Affidavit, Exhibit D. Mr. Hoffmeister reviews all life insurance and annuity policy forms and endorsements filed by insurance companies to ensure compliance with statutes applicable to such forms, as law requires the annuity contracts to be filed with the Department at least thirty days prior to their sale in the state. Hoffmeister Affidavit, ¶2-3. As stated more fully in Mr. Hoffmeister's Affidavit, the NFOA Installment Plan Contract bears the typical features of an annuity.

19. Mr. Hoffmeister states that an annuity is a contract in which an insurance company makes a series of income payments at regular intervals in return for a premium or premiums the policyholder has paid. A policyholder's contract value in an annuity contract is the premiums paid by the policyholder, less any applicable charges, plus interest credited. Typically in an annuity, the policyholder makes a single payment for a guarantee that the insurance company will make periodic payments in the future. The policyholder typically retains the right to receive at least a portion of the initial premium at any time less the surrender charges. (Hoffmeister, Ex. D, ¶4-5).

20. Mr. Hoffmeister notes that there are different types of annuities which can be purchased in Tennessee. A deferred annuity has two parts or periods. During the accumulation

period, the money put into the annuity, less applicable charges, earns interest, which grow tax-deferred as long as left in the annuity. During the second period, called the payout period, the company pays income to the policyholder or annuitant. While Tennessee law places annuities within the definition of life insurance, annuity is not like typical life insurance since the benefits are not dependent on the death of the annuitant. The payout period with an annuity can be for a fixed number of years or until the death of an annuitant. (Hoffmeister, ¶¶6-7).

21. Mr. Hoffmeister has reviewed the documents issued by NFOA under its Installment Plan Agreement to Melba Prosser including the Installment Plan Agreement and the illustration accompanying, which, based on his experience in reviewing annuity contracts, is an annuity. The NFOA Installment Plan Agreement has all the characteristics of a deferred annuity, in that Mrs. Prosser paid \$319,789 up front in order to receive guaranteed benefits that begin after a seven year accumulation period and will last for ten years. (¶10). The document entitled National Foundation of America Installment Plan Agreement with Robert and Rosemary Sweigert purports to be a "ten year flexible deferred with a ten year payout," which was identical to the Installment Plan entered into with Ms. Prosser, with an illustration explaining the pay out period. The Sweigert NFOA Installment Plan has all the characteristics of a deferred annuity in that the Sweigerts paid \$110,000 up front in order to receive guaranteed benefits that begin after a ten (10) year accumulation period and will last for ten years. (¶ 11-12). Mr. Hoffmeister reviewed the documents appearing to contain the payout information for a NFOA Installment Plan sold to Imogene May, a citizen and resident of Tennessee. This purports to be a "ten year flexible deferred with a ten year payout." He concludes this payout plan evidences an annuity,

because of the features that Ms. May paid \$53,000 up front in order to receive guaranteed benefits that begin after a ten year accumulation period. (¶ 13-14).

Website, Advertising and Brochures to Customers and Sales Force

22. NFOA constructed and maintains as a sales promotion vehicle a website for its business, www.nationalfoundationofamerica.org, which is identified on its contracts and literature, and available nationally to the general public with a web search internet connection, including anyone in Tennessee. This website permits a Tennessee resident to contact NFOA by submitting personal information such as name, address, phone number, email address and comments. This website includes pages soliciting and explaining how customers can exchange annuities, real estate or securities for the NFOA contract, and purported consequences of those exchanges, particularly in the area of generating favorable tax deductions based on its being an organization purportedly described by Section 501(c)(3) of the Internal Revenue Code. As noted, the Internal Revenue Service as of May 4, 2007, had no record of an exemption under Section 501(c)(3) for NFOA. The website's printable material has remained essentially unchanged between October 2006 and May 2007, (Heisse Affidavit, Ex. A; collective exhibit D). The website also includes videos discussing these matters, and features Richard Olive speaking, as well as Kenny Marks, identified as "Vice President" of NFOA, speaking on the Securities Video. The Department made a video of the website, playing the various videos in which Olive or Marks describe asset exchanges of customers' annuities, securities and real estate for NFOA's contract. (Copy of Affidavit of Dale Clements, Department's Chief of Securities Enforcement, reflecting the videography, attached as Exhibit E hereto. The original videotape described in that affidavit may be submitted to the Court if necessary at hearing, and still has not been transcribed.)

Printouts made May 19, 2007, at 9:00-9:10 a.m. of the moment when the speaker's name is displayed in each of the 4 website videos, Welcome Video, Securities Video, Annuities Video, and Real Estate Video, are attached as Exhibit F. Tennessee residents and any other persons are thereby solicited to exchange various types of assets for the NFOA contract that is advertised.

23. According to NFOA's own records obtained by the Department, pursuant to administrative subpoena, NFOA had entered into at least 233 contracts as of April 20, 2007, resulting in at least one contract reflected for Tennessee out of three known direct solicitations, for a total receipt of \$31.2 million, and incurred delayed payout obligation of \$41.9 million, measured in future dollars. Mr. Heisse, Insurance Fraud Investigator, has created a summary spreadsheet with these totals (Heisse's Affidavit, Ex. A, ¶19-20; Spreadsheet, exhibit I thereto). Accordingly, the average dollar value received by NFOA per contract would be about \$133,900.00, and several customers shown had more than one contract. This same spreadsheet concludes NFOA paid approximately \$2.3 million in commissions to salespersons. NFOA will also have absorbed any surrender charges or other expenses of closing, and have operating expenses reducing the available assets. NFOA's 2006 financial statements with the Tennessee Secretary of State's Division of Charitable Solicitations [Heisse Ex. A; exhibit C thereto] reflect large outlays for fundraising expense, and for other administrative expense. As an example, in April - June 2006, revenue from "contributions" (i.e. listed checks and "annuity ex.") is \$2,170,535.82. NFOA paid only \$15,167.67 for charitable services, but \$193,246.67 for fund raising expense, plus \$67,546.32 for administrative expense. The amounts paid to "immediate annuitants" \$17,450.09 is not a charitable expense. Thus, in that period, about 12% of cash

receipts were immediately expended. Those cash receipts were probably already reduced from the amounts received from clients due to surrender charges on annuities.

24. The Department received examples of original sales promotion postcards issued by NFOA, mailed to individual salespersons describing NFOA as issuing annuities. These cards refer the recipient to a "New marketing idea" and on the reverse, state:

Exchange a Client's Indexed Annuity for a New Annuity at the Accumulated Value. Your client receives a tax deduction and you earn 9%! Call Richard Olive 888-340-NFOA (6362) National Foundation of America.

(Hesse Affidavit, Ex. A; Cards attached Exhibit E-1 thereto). Moreover, NFOA's half-page advertisement in the April 2007 issue of magazine *BrokerWorld*,² makes a similar pitch to a prospective insurance sales force:

Exchange a Client's Indexed Annuity for a New Contract at the *Accumulated Value*. 9% COMMISSION Your Client receives a Tax Deduction and YOU EARN 9%. Call 888-340-NFOA (6362) National Foundation of America

(Hesse Affidavit, Ex. A; exhibit E-2 thereto, with typeface emphasis approximated). In the advertisement "New Annuity" has been replaced with general terms "New Contract," but in all other terms it looks the same.

25. NFOA appears to alternate whether it will disclose that the contract is an annuity, a recognizable life insurance product, or obscure its character as an "installment plan" depending on its audience. Customers may receive a full-page color brochure (Hesse Affidavit, Ex. A, attachment K) referring to NFOA's product as a "Tax-Deductible Installment Plan," which, like

² *BrokerWorld*, according to its own website, "is the only national insurance magazine founded, focused and edited to specifically address the brokerage marketplace and the unique informational needs of independent life and health producers who select the products best suited to their clients' needs from a variety of companies and marketers." (www.brokerworldmag.com About Us webpage; 5/19/07).

the website, stresses to customers that the plans are a way “to achieve your [the customers’] financial goals, while assuring yourself and designated beneficiaries, ...a guaranteed tax-favored income for a guaranteed period of time. Tax Deductible Installment Plans provide a substantial income tax deduction which may be used to lower your adjusted gross income by up to 50% and can be funded with a variety of assets. . . .” (Internal page of Heisse aff. ex. K, headed “Tax Deductible Installment Plan”). The Brochure also continues the misrepresentation that NFOA is a Tennessee 501(c)(3) public charity and that NFOA plans provide tax relief to individuals and families nationwide. (2nd page, inside of cover). But, as shown in the Charitable Solicitations financial statements, NFOA admits officially to the State of Tennessee that payments it started making to customers under its contracts are to “immediate annuitants.”

NFOA’s Sales and Attempted Sales of Annuities to Tennessee Residents

26. Based on records disclosed to the Department, NFOA only recently has actually consummated any contract in Tennessee, and solicited Tennessee residents, as opposed to its wide-ranging activity in other states since its inception last year. Viewing the contracts submitted under subpoena to the Department, Rob Heisse, Fraud Investigator, viewed a completed contract in Tennessee for a Ms. Melba Prosser, dated April 3, 2007, sold by Theodore Little, a Tennessee licensed insurance agent. Heisse Affidavit, Ex. A, ¶17. Heisse interviewed Little on April 27, 2007, who told him he had learned about NFOA from Hunter Daniel, a licensed insurance agent in Alabama, who said clients would receive tax savings, a 5.15% guaranteed return and full accumulated value of their annuity, upon changing the ownership to NFOA, which would liquidate the annuity and place the money in trust. Little did not understand the tax deduction aspects of the transaction. He would receive a 9% commission on the surrender value of any

transaction completed for NFOA. Little stated he solicited two other Tennessee residents' business, Robert and Rosemary Sweigert (one transaction) and Imogene May. Heisse, ¶22.

27. Department Insurance Fraud Investigators including Robert Heisse, Judith Nash and Clifford Hargrove, thereafter interviewed Melba Prosser, Imogene May, and Robert Sweigert and obtained sworn statements from them. These persons were individually solicited by NFOA in Tennessee for contracts, and their Affidavits respecting their dealings with NFOA, are attached hereto and incorporated in full by this reference, as Exhibits G, H and I. These affidavits show that NFOA intends to consummate its unauthorized annuities in Tennessee, and uses misleading and pressurizing tactics in the course of those sales. NFOA also is discouraging any cooperation with the Department of Commerce and Insurance. The affidavits are summarized as follows:

A) **Melba Prosser.** (*See*, Affidavit of Melba Prosser, Exhibit G.) Mrs. Prosser is an 80 year old widowed resident of Nashville with a fourth grade education. On April 3, 2007, Mrs. Prosser was solicited personally by her own insurance agent, Ted Little, who had sold her an annuity with American Investors Life as well as other business. Prosser, ¶2. Little was accompanied by Hunter Daniel, whom she did not know, and presented her documents prepared before the meeting that listed all investments Mrs. Prosser owned with three insurers. Mrs. Prosser did not know how they knew about the other two investments. Prosser ¶3.

Included in the documents were a presentation (Prosser, attachment 1) for a "7 year Flexible Deferred, 10-Year Period-Certain Income Stream" discussing an income stream in the example beginning in 2014, 7 years from the date of transferring ownership of the existing annuity with an accumulated value of \$319,789. This chart shows monthly payments for ten years beginning in seven, of \$4,160.25, and also that Mrs. Prosser would be eligible for a tax deduction totaling \$75,422.00. [see also, Heisse Affidavit, Ex. A, ¶23]. Little and Daniel told her she could replace her annuities with a NFOA product that could earn a higher interest rate and receive tax benefits. Prosser, ¶4. They said there was not any risk and NFOA would reimburse the penalties she would receive from the annuity companies. They told her she could earn 5.5% interest and that she would have no control over what happened to the money once NFOA received the funds, and NFOA would not be sending any statements.

She signed some documents. Mr. Little and Mr. Daniel returned later, and the documents had been notarized. Prosser, attachment 2. One document, attachment 3 to Mrs. Prosser's affidavit, in handwriting, appearing to be signed by her and notarized, instructs American Investors Life Ins. Co. to make a change of ownership of her annuity to NFOA, and not to call her, write her or send an agent out to visit her. Mrs. Prosser says she did not prepare that statement, and was not aware of its existence until it was shown to her by Tennessee Department of Commerce and Insurance representatives. Prosser ¶5. Mrs. Prosser signed a blank form NFOA Installment Plan Agreement. Prosser ¶5, att. 4.

Later after Mrs. Prosser talked to her son, she wanted to discuss the transaction with Mr. Little. Little and Richard Olive, president of NFOA, visited her a few days later. Olive made several representations about the transaction. Prosser, ¶6, 7, 8. She was told there would be no federal tax on the "rollover" of her annuities and that she could withdraw up to 10% of her money every year without penalty. Mr. Olive explained NFOA was a charitable organization that offered a product with a better return and tax advantages than her existing annuities. Mrs. Prosser asked how NFOA could pay fees and expenses and still insure the investors had the returns Mr. Olive was promising. Mr. Daniel and Mr. Little responded NFOA would lend the funds out to make money and insure NFOA could meet their commitments.

Before dealing with NFOA, Mrs. Prosser's three annuities had approximate value of \$222,000 AXA Equitable; ING USA \$46,000, and American Investors \$56,000. Mrs. Prosser said the AXA and ING annuities had already been transferred to NFOA at the time of the second meeting with Little and Olive. Prosser ¶9. Mrs. Prosser states she is having second thoughts about transferring annuities to NFOA, and that she did not really understand the product. She had known Mr. Little for years and trusted him to give good investment advice; she did not have the necessary expertise to structure her investments for the best return and tax advantage, and relied on Mr. Little. Mr. Little said he did not charge the elderly for his work, but didn't discuss that he would receive a 9% commission for placing her investment with NFOA. Prosser, ¶10.

B). Imogene C. May. Affidavit dated May 14, 2007, Exhibit H. Ms. May is a 77 year old widow and retired, living in Kingston, Tennessee. She had invested in annuity with American Investors Life, sold to her seven years ago by Ted Little, which had been her only investment experience. Ms. May was dissatisfied with her current annuity, that she could only get her money out of her existing annuity once per year for thirty years. Ted Little asked to meet about the annuity and arrived on April 4, 2007, with Hunter Daniel of Alabama, whom Ms. May did not know. Daniel talked the most. Daniel and Little explained the NFOA program and said Ms. May could replace her annuity with the NFOA product, with a higher interest rate and tax benefits, and without any risk to her money. They said she could withdraw her money at any time, and NFOA would pay all the penalties she would be charged by the annuity company. They said she

would earn 5.25% and did not mention any possibility of having to pay federal income tax if she transferred her money to NFOA. May, ¶3.

Later, Little brought back a document to sign, but gave Ms. May no papers but a booklet outlining general information on the NFOA investment program. Ms. May recalls signing one document, but is not sure it is the one attached as Attachment 1 to the affidavit bearing a signature and notarization that she doesn't recall. (The notarized page contains a typewritten letter appearing to be signed by Ms. May to American Investors telling them she does not want them to attempt to call her to conserve her business. She states "Any attempts to conserve this business in the manner described above will result in my written complaints to the State Department of Insurance and the state Attorney General's Office.") She never saw the other pages of the attached documents and does not remember signing the papers and does not know if that is her handwriting. May, ¶4.

Ms. May says she was shown (by the investigators) a document for the plan saying she will not get any money for ten years, that is, starting in 2017. She did not know this or sign anything agreeing to that plan. She did not get a copy of this document and would not have been interested if she had understood it. [See, documents at Exhibit 4 to Brian Hoffmeister Affidavit, Ex. D- National Foundation of America, Imogene C. May 10 Year Flexible Deferred 10 Year Payout dated April 3, 2007, presented by Theodore Little, with two pages of financial illustrations]. May, ¶4.

Ted Little called Ms. May approximately one week before her May 14, 2007, Affidavit to the investigators. He said the Department was looking at NFOA and that she would probably get a call from the Department. He said he did not understand why this was the business of Commerce and Insurance since NFOA is not an insurance company. Ms. May was left with the impression that Little did not want her to talk to the Department's representatives. (May, ¶5). Ms. May is having second thoughts about transferring her annuity to NFOA. She just wanted to be able to get her money. She trusted Little for good investment advice, and assumed he had her best interest at heart with the NFOA investment but did not think he would take advantage of her, as he did. Little did not disclose a 9% commission for placing her investment with NFOA. (May, ¶6).

C) Robert Sweigert and his wife Rosemary Sweigert. The Sweigerts were solicited on April 3, 2007, at their home in Columbia, Tennessee. See, Affidavit of Robert Sweigert (Sweigert), dated May 14, 2007, Exhibit I to Petition. Mr. Sweigert is 73 and retired after 22 years in the telephone industry. His investment with Southern Estates was bought by Puritan, and then the account was taken over by Ted Little. Sweigert also purchased an annuity through Little from National Western. Little and Hunter Daniel, previously unknown to Sweigert, came to discuss a plan from NFOA. They said he would make a 5% return, NFOA would get 5% and 3% would go to charity. NFOA would absorb all surrender charges when his annuity was cashed in and moved

from National Western to NFOA. Robert and Rosemary Sweigert both signed the NFOA Installment Plan Contract and Agreement attached to the Affidavit as attachment 2, and received the illustration of their payment and payout period, as attachment 1. Sweigert, ¶2. Attachment 1 shows monthly payments of \$1,325.63 for a ten year term beginning May 1, 2017, a tax deduction of \$44,623, and total initial value of \$110,000.

Sweigert did not realize until the Department of Commerce and Insurance representatives pointed out that he would not receive NFOA payments until after 10 years, with a first payment on 2017. Little and Daniel did not point out this fact. Had he been aware of the 10-year deferral, Sweigert would definitely not have agreed to transfer his money. Sweigert is receiving a 10% return from the National Western annuity and is satisfied with that. He is not in good health and would not have agreed to any product that would not begin payments for 10 years. Sweigert, ¶3.

Sweigert was contacted by Little a few days before the date of his affidavit and informed that the Department of Commerce and Insurance was looking at the NFOA program, and representatives might try to contact him. Little said he thought the NFOA product was good and that Sweigert and his wife did not have to talk to the Department representatives. Sweigert, ¶4.

28. The Affidavits of three Tennessee residents show Little's practice of targeting the sale pitches to former annuity investment clients, with the assistance of Mr. Daniel, and on occasion by Mr. Olive himself. NFOA evidently is making several misrepresentations, and outright failing to inform the clients about the terms of what they may be signing, or failing to give them completed contracts. These persons are at the mercy of what documents NFOA completes in their name, and the representations it makes to others about their intentions. The Tennessee residents are in general unsuited or averse to deferred investments, and surprised about the terms apparently recommended or in contracts. They are enticed by or looking for favored tax treatment and other concessions promised by NFOA to absorb all the financial losses associated with cashing in their existing investments. They are being told to be alert to

investigation by the Department of Commerce and Insurance, and Little has claimed that this is not the Department's business because NFOA is not an insurance company. May, ¶5.

29. NFOA through its documents and these client sales pitches misrepresents the tax status of its organization and the consequences of "donating" or investing with them, and thus there is substantial hazard to the clients in terms of their expected benefits and what will ultimately be available to them. NFOA has no determination from the IRS as to its entitlement to be tax-exempt. As of May 17, 2007, NFOA is still not classified as an organization exempt from Federal Income Tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). The IRS reports that NFOA filed an application for exemption in 2006 and that it is still under review in the Determinations Department of the Internal Revenue Service. (See, attached Exhibit J, Letter May 17, 2007 to Texas Department of Insurance, Enforcement Division, from Deranda Scott, Revenue Agent, which has been shared with the Tennessee Department).

30. NFOA's contracts reflect an express written term that it is recognized by the IRS as a charitable non-profit organization under Section 501(c)(3) of the Internal Revenue Code (Prosser, attachment 4), and NFOA represents in multiple statements and materials that the contract will entitle the customers to potential generous tax deductions related to that status. The IRS states that it has granted NFOA no such designation. The deceptive underpinning related to NFOA's supposed tax favored treatment of its contracts permeates its entire business model and sales pitch. This misrepresentation has materially and irreparably harmed and has the potential to harm financially all its customers and the intended beneficiaries of the contracts. These harms are as varied in nature and degree as the circumstances of all those individuals' tax conditions,

the assets turned in to NFOA, and the extent to which they have entrusted their money and keyed their tax status and consequences to reliance on such an organization.

31. Due to the fact that NFOA has been pursuing these types of oppressive sales of an unregistered unlicensed annuity product in other states, several have expressed concern to the Tennessee Department and a desire that Tennessee, as the domiciliary state, take action within its legal powers to stop NFOA. The orders entered to date by some other states enumerate that NFOA's lack of appropriate insurance licensure, or, where the classification in the state requires securities licensure for NFOA and its representatives, the lack of that other authority, is grounds for injunctions and cease and desist orders against NFOA conducting business in their states. Because the records obtained by Tennessee demonstrate NFOA has conducted business in even more states, it is anticipated that more orders of this type would follow. Also, since it is unknown whether the records obtained by Tennessee were complete, investigations may show there have been other transactions in violation of law.

32. NFOA has not attempted to obtain a certificate of authority from the Commissioner, nor applied for any exemptions, and therefore the Commissioner is forced to address the nature of the contracts being issued by NFOA, and take cognizance of the public interest in terminating NFOA's business operations expressed by the other states into which NFOA is injecting its unlawful business from its base in Franklin, Tennessee. It is clear that the contracts are annuities and insurance business. Other states have ordered NFOA to cease and desist the unauthorized transaction of insurance business in those states. These include:

A. **Washington** — Certified Copy of Order No. D06-245, In the Matter of National Foundation of America, an Unauthorized Entity, and Richard K. Olive and Susan L. Olive, Order to Cease and Desist, Dated September 18, 2006, Office of the Insurance Commissioner for the

State of Washington; Exhibit K attached. The Washington order required Respondent NFOA and the Olives to cease and desist from engaging in the unauthorized business of insurance in the State of Washington, including the issuance of tax-deductible annuities, "installment plans," (term certain annuities) and charitable remainder trusts. Washington's order cites similar laws to Tennessee prohibiting unauthorized insurance, RCW 48.05.030. This order has not been challenged by NFOA, on information and belief. NFOA's records reflected a Washington state contract listed on Heisse Affidavit, summary, exhibit I, p. 7, dated one day after the Washington order issued, 9/19/2006.

B. Florida — Certified Copy of Immediate Final Order filed April 13, 2007 in the Office of Insurance Regulation in the State of Florida, in the Matter of National Foundation of America, Richard K. Olive, Susan L. Olive, Breanna McIntyre and Robert G. Dewald; Exhibit L, attached), ordering the respondents to cease and desist from the transaction of unlicensed, unauthorized insurance and annuity contracts covering Florida consumers. NFOA Florida counsel filed an administrative appeal of this order with the First District Court of Appeal, on May 11, 2007. Exhibit L-1. Florida has also issued an order against Robert G. Dewald, who is a Florida insurance agent licensed to issue types of life or health insurance including variable annuity, on the ground that the solicitations of NFOA contracts were unauthorized insurance and violated certain other standards governing the sale of appropriate products. Exhibit L-2. The sales practices alleged against Mr. Dewald are of the type that are entailed by the oppressive and misleading solicitation of customers by NFOA representatives in Tennessee.

C. Iowa — Certified Copy of Cease and Desist Order against National Foundation of America issued April 13, 2007, by Commissioner of Insurance, State of Iowa, pursuant to the Iowa Securities Act, the Iowa Examination of Insurance Companies Act, the Iowa Unauthorized Insurers Act and the Iowa Insurance Trade Practices Act, Exhibit M. NFOA counsel from Illinois filed an administrative appeal of this order on May 11, 2007, copy attached, requesting a contested case hearing, taking positions that the Iowa Commissioner lacked jurisdiction and asserting that NFOA's business is not insurance or a security. Exhibit M-1.

33. The Department has received two orders that characterize the unauthorized NFOA contract solely as a security.

A. Texas — A Certified copy of Emergency Cease and Desist Order, issued May 18, 2007, by the Securities Commissioner of the State of Texas, is attached hereto as Exhibit N. NFOA, Richard Olive, Ken Marks, and two Texas individuals, are ordered to cease and desist on the grounds that NFOA and its officers and representatives are issuers of or soliciting sales of unregistered securities in Texas and engaging in fraud in connection with offer for sale and sale of such securities through its Tax Deductible Installment Plan. The order becomes final and non-appealable if no hearing is requested within 31 days.

B. **Alabama** — Fax copy of a Cease and Desist Order, CD-2007-0014, Issued by the State of Alabama Securities Commission, on May 21, 2007, against NFOA, Richard Olive, President of NFOA, Kenny Marks, a Vice President of NFOA, and Hunter Brown Daniel, Jr. (Identified as an individual registered with the Alabama Department of Insurance to sell insurance) and Suzanne Nance Daniel, his wife, as agents of NFOA listed at the address 1705 Big Cove Road SE, Huntsville, AL 35801; Exhibit N-1, attached (certified copy to be filed when available). This order directs the respondents to cease and desist further offers or sales of any security into, within or from the state of Alabama, having found that NFOA's marketing of the Installment Plan Contract and Agreement, was an annuity. In Alabama, a security includes any "annuity contract unless issued by an insurance company." Section 8-6-2(10), Code of Alabama 1975. The order finds NFOA's product to be unregistered, without exemption, that NFOA is not licensed to conduct business as an insurance company in Alabama, that the Respondents are not appropriately licensed under the securities laws, and that material misrepresentations are also accompanying NFOA's sale in Alabama.

34. One of the Florida Department of Financial Services investigators, Kimberly Brown, has given an Affidavit dated May 17, 2007, for submission in this case (Brown Affidavit, Exhibit O hereto), to describe for this Court her own investigation into the NFOA activities, after a consumer advocacy referral, and concern by a consumer about a transaction with a Florida licensed agent on March 22, 2007. Ms. Brown's affidavit explains:

Ms. Brown obtained information on the investors in Florida from a hotline and several insurers who were concerned with losing customers. She determined that many of the sales agents for NFOA had previously sold these investors their original annuity that was being surrendered to purchase the NFOA product. Brown Affidavit, Ex. O, ¶6. Brown was suspicious because a large number of people surrendered their annuities to invest with NFOA over a relatively short period of time, which is unusual for investment in 501(c)(3) public charities. Brown, ¶7. Brown was concerned that NFOA was acquiring ownership of annuity funds and yet claiming to provide a tax advantage to the investor, and it was unclear when the investment became a charitable contribution. Also, with the rate of return, 5.5% plus 9% commission to agents and overhead expense, it was difficult to see how NFOA could "remain profitable within the confines of a charitable organizations 'profitability.'" Brown, ¶8. NFOA has no license or approval to sell insurance in Florida. Ms. Brown states the contracts provided to investors through Florida licensed agents evidenced that they were gaining a "charitable gift annuity," or "immediate pay out annuity" and used typically insurance based terminology. ¶9.

Similarly to the experience of the Tennessee customers, Ms. Brown reports confusion among the seven (7) elderly NFOA investors she interviewed, and that NFOA sales agents were not explaining many features of the product, such as the agents' commissions, the fact that investors could cash out early, how the charitable contributions worked, and that they in fact relinquished ownership in their annuity funds to NFOA. ¶10-11. Ms. Brown found tax consequences to several investors, who received IRS forms from original annuity issuers for taxable income. Funds had been surrendered by the investor and no charitable organization receipt had been issued or filed in behalf of these consumers as required by IRS codes. From her interviews, NFOA sales agents never told these investors that they would incur a tax bill by surrendering their existing annuity and purchasing the NFOA product." ¶12. The President of NFOA, Richard Olive, had advised one of the agents, a Mr. Winter, who sold the product in Florida, that NFOA paid 5%, that NFOA would refund to the investor any surrender charge the investor incurred, and that the NFOA product had tax benefits. ¶14. One elderly Florida resident had surrendered her annuity with American Equity Investment Life Insurance Company to transfer funds to NFOA. Brown learned that Mr. Olive visited with that resident Ms. Blevins to obtain her signature on the transfer contract. Brown determined Ms. Blevins believed she was simply purchasing another investment product of American Equity and had no idea she was relinquishing ownership of her annuity funds to NFOA.

35. Robert Koppin, an attorney with the State of Iowa Insurance Division, Market Regulation Bureau, also has given an Affidavit to describe his investigations after insurer concerns arose about NFOA soliciting American Equity's existing annuitants under the guise of being a 501(c)(3) charity in Iowa, and causing Iowa residents, three of whom he interviewed, to surrender their annuities to purchase the NFOA product. (Koppin Affidavit, Exhibit P, hereto, fax copy, with original to be filed when received; ¶5-7). He determined the Iowa clients did not intend to relinquish ownership of their annuity funds to NFOA, and that they were not told they would incur a substantial surrender charge, or about possible capital gains taxes. The clients believed the NFOA product was simply another American Equity product that provided a better return, as the NFOA product was sold to them by the same sales agent who sold each of them the original American Equity annuities that they surrendered to purchase the NFOA product.

Koppin, ¶7. Based on his investigation, the Iowa Insurance Division issued a Cease and Desist Order (i.e. Exhibit M, hereto), and Mr. Koppin concludes that the annuity funds invested by the three Iowa clients were fraudulently obtained and that "there is a substantial probability that the funds may be lost to an illegal investment scheme." Koppin, ¶10-11.

36. More background about the American Equity Investment Life Insurance Company's inquiries into several clients who had rapidly executed ownership change forms to transfer ownership to NFOA, is provided in the Affidavit of Joni Knapp, Client Service Administrator for American Equity, at Exhibit Q hereto, (Scanned copy; original to be filed when received):

Ms. Knapp contacted about twenty-five clients who had executed ownership changes to NFOA, to advise them that they would incur a substantial surrender charge and confirm that the clients understood the legal consequences. Knapp, ¶4. She learned that many of the clients were elderly who incorrectly thought they were renewing their American Equity annuity, or were exchanging an existing policy for a higher-yielding product by American Equity or another insurance company. Few understood that the documents NFOA requested be signed would assign ownership of their annuities to NFOA or that the value of funds transferred into NFOA would be reduced by the surrender charges for the American Equity annuity. For some, the NFOA sales agent was the same one who sold their American Equity annuities. Knapp, ¶5-7. Ms. Knapp obtained NFOA's Installment Plan materials, and a cover letter from Richard Olive, stating NFOA was recognized as tax-exempt under Section 501(c)(3). Ms. Knapp forwarded these materials were given to American Equity's Associate General Counsel, Nick Gerhart. Knapp, ¶8-10.

37. Nicholas C. Gerhart is Vice President and Associate General Counsel of American Equity, which is a life insurer issuing fixed rate annuities, index annuities, a variable annuity and life insurance. Affidavit of Nicholas C. Gerhart, Exhibit R, hereto, (Scanned copy; original to be filed when received). Mr. Gerhart describes the unusual volume of withdrawal or surrender request forms submitted by NFOA in February 2007, and that these were requesting

cancellation of American Equity contracts and immediate payment of the cash surrender value. He reviewed the materials and results of Ms. Joni Knapp's investigations, and made concerns known to Iowa's insurance department. Moreover, Mr. Gerhart concludes from his experience and background that the NFOA Installment Plan materials collectively constitute single premium term certain annuities, some of which provide for payments to begin immediately, and some of which provide for deferred payment. Gerhart, ¶18.

38. Because of the nature of NFOA's contracts, and his review of Cease and Desist orders issued by Washington, Florida, and Iowa finding NFOA to be issuing unauthorized insurance contracts, and due to American Equity's investigations, Mr. Gerhart expresses that his employer, American Equity, has considerable concerns about effectuating any transactions involving NFOA. ¶19-22. Mr. Gerhart's comments represent a predicament of any insurer being presented with information that customers are being preyed upon by NFOA and where there is no confirmation of any legality or veracity of NFOA's product and representations to the public.

39. Under Tenn. Code Ann. § 56-2-105, NFOA ought never to have conducted its business of issuing term-certain immediate and deferred annuity contracts, contracts it is terming purportedly "Installment Plan Agreements," without first obtaining a certificate of authority from the Department of Commerce and Insurance. Defendants, had they applied, would likely never qualify under the numerous standards and managerial qualifications to issue these types of contracts, and the contracts themselves in their current form, would not be approved life insurance policy forms. Hence, all further business activities should cease, all pending transactions should be suspended, and NFOA's ill-gotten proceeds protected from loss and returned to the extent possible to customers. The damages NFOA has caused may be incapable

of reversal because the customers may not be able to recover their original status in the assets that were exchanged. Had the NFOA sought such a certificate of authority, based on the information that the Department now has about the actual type and manner of business operations, management and representations made by Defendants, no such certificate would be granted by the Commissioner.

40. The further justification for receivership, below, arises because NFOA has not sought regulation by the Department, or its counterparts in other states where it is doing business. It is harming people everywhere, and it cannot be concluded that NFOA would remain in existence to pay its obligations far into the future, or even that it has assets to pay back its customers' contributions made for contracts that had no legal authority. The failure to seek regulatory authority, coupled with the long deferrals of many of its contracts for elderly annuitants, causes concern as to their intent to perform any contracts as worded. NFOA does not appear to have the ability to pay the entire illegal contract receipts back to customers.

FACTUAL GROUNDS FOR LIQUIDATION OF NFOA's BUSINESS

PROHIBITIONS AGAINST UNAUTHORIZED INSURANCE BUSINESS

41. The general insurance law of Tennessee, found in Tenn. Code Ann. § 56-2-105, makes it unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this state without a certificate of authority from the Commissioner or without coming within any statutory exception through application to and satisfaction of all requirements to be enforced by the Commissioner. Similarly, Tenn. Code Ann. § 56-6-114, in the provisions governing insurance producers (aka agents), provides that "A person shall be personally liable on all contracts of insurance unlawfully made within this state by or through

such person directly or indirectly, for or on behalf of an insurance company not authorized to do business in this state.”

42. Tenn. Code Ann. § 56-2-102(a) requires, similarly, “No domestic insurance company ...shall commence business in this state until it has complied with the provisions of §§ 56-2-101 — 56-2-104, 56-2-113 — 56-2-115, 56-2-201 and 56-2-301³, and has received from the commissioner a certificate of authority to do business.” The statutory and rule-based requirements to do business in Tennessee are comprehensive and continuing, with minimum standards for financial adequacy, capital, surplus, and organizational and managerial soundness. NFOA is evading this entire statutory scheme and is conducting business in stark violation of numerous laws and rules adopted for the protection of policyholders and the public.

43. The purposes of Tennessee’s insurance regulation in Title 56 of the Tennessee Code Annotated have been identified by the Tennessee Supreme Court as follows:

“[p]rotection of policy holders and revenue of the State are the controlling objects of the [Insurance] Act, the former being paramount....” *North British & Mercantile Insurance Co. v. Craig*, 106 Tenn. 621, 645, 62 S.W. 155, 160 (1901). As an expression of public policy on insurance, nothing we have found or to which we have otherwise been directed indicates that this policy has not been followed by the Legislature in every enactment and amendment of Title 56.

Neff v. Cherokee, 704 S.W.2d 1, 4-5, (Tenn. 1986). The Commissioner seeks the protection of policyholders and the public, which NFOA has thwarted by failure to submit to the insurance regulatory scheme in Tennessee or anywhere.

³ The sections referenced provide several requisites for commencing business, as to qualifications, making application before operation, special deposits, imposing capital and surplus minimum standards, showing a listing of the types and kinds of insurance, and giving the force and effect of law to rules promulgated by the Commissioner to regulate the writing of the kinds and types of insurance listed.

44. NFOA has also not tried to obtain any legal exemption for its operation from the requirements of a certificate of authority, and does not appear based on the Commissioner's knowledge of its business, to have any avenue for an exemption. Examples of exceptions are those listed in Tenn. Code Ann. § 56-2-105 or Tenn. Code Ann. § 56-2-106 for certain nonprofit annuity companies that are organized and operated *exclusively* for the purpose of aiding nonprofit scientific or educational institutions, a Commissioner-granted exemption with several statutory conditions that have *no applicability* to NFOA. NFOA holds no certificate of authority from the Commissioner, and has been granted no exemptions under this or any other statutes. See also, ¶9 above, and Ribe Affidavit.

45. NFOA has not filed anything to become a qualified charitable gift annuity issuer in Tennessee, under Tenn. Code Ann. §§ 56-52-101, *et seq.*, nor is it eligible. The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this State. Tenn. Code Ann. § 56-52-103. Issuers that are not qualified are deemed to be insurers. NFOA does not qualify, categorically, under this statute, as it has not been in continuous operation for at least three years and is not a successor or affiliate of a charitable organization that has been in continuous operation for at least three years. Tenn. Code Ann. § 56-52-102(3)(B). Also, its installment contracts (term certain annuities) are not payable over one or two lives, and thus do not fit the definition of a charitable gift annuity under Tenn. Code Ann. § 56-52-102(1). NFOA has shown no compliance with any other requirements of Tenn. Code Ann. § 56-52-102, which is exclusively to authorize the type of annuities issued for one or two lives, as to maintaining the one million dollars of unrestricted assets required exclusive of those funding the annuity agreements. Further, at this point, it appears NFOA's contract is not issued

by a charitable organization defined as an entity described by Section 501(c)(3) Internal Revenue Code.

46. NFOA has simply not applied for any insurance authority, which is the most significant omission because it shows intent to evade the law.

47. Tenn. Code Ann. § 56-2-107 states:

Any of the following acts in this state, effected by mail or otherwise by an unauthorized insurer, are included among those deemed to constitute transacting insurance business in this state:

- (1) The issuance or delivery of contracts of insurance to residents of this state;
- (2) The solicitation of applications for such contracts;
- (3) The collection of premiums, membership fees, assessments or other considerations for such contracts; or
- (4) The transaction of matters subsequent to the execution of such contracts and arising out of them.

As can be seen from the affidavits of Robert Heisse attached, NFOA, through Theodore Little, and Richard Olive and others, have issued and delivered contracts to a resident of this state, Ms. Melba Prosser, as found in the contract records obtained by the Department. Moreover, NFOA has attempted the solicitation of applications for such contracts, through seeking payments and assets from two other Tennessee residents, and it appeared some elements of Ms. Imogene May's contract were consummated leading to annuity surrenders. NFOA collected valuable assets and annuities for such contracts. Thus, under Tenn. Code Ann. § 56-2-107, NFOA should be found to have transacted insurance business in this State.

48. NFOA is conducting unauthorized insurance and soliciting and issuing such contracts in Tennessee and to other states' residents. Moreover, it is causing residents to transfer and convey legitimate assets, usually income tax deferred annuities from licensed companies, for

the benefit of themselves and their heirs, to NFOA in exchange for NFOA's unlicensed charitable term certain annuities.

49. NFOA has used in papers submitted to an insurer, American Investors Life, a copy of a corporate resolution, dated on or about April 18, 2006, that resolved that Richard K. Olive as Executive Director was authorized for the corporation to:

1. liquidate stocks, bonds, annuities and other securities received by the Organization in connection with charitable contributions or transactions and transfer the resulting proceeds to any account of the Organization, and to execute and deliver any and all checks, drafts, agreements and other documents in connection therewith, and
2. enter into and execute planned giving or charitable contribution transactions with donors, including executing any and all documentation related to the *acceptance or acquisition of a donation, an option and/or of title to real property given in exchange for a charitable gift annuity, charitable installment purchase agreement or other charitable transaction*, and the marketing, sale, liquidation, conveyance and transfer of such property, all on behalf of the Corporation without any further review or approval by this Board of Directors.

Corporate Resolution attached to transfer of ownership request, Attachment 1 to Exhibit H, Imogene May's Affidavit. Despite the language in this resolution purporting to empower Richard Olive to execute documents to consummate exchanges for "charitable gift annuities," NFOA never has been authorized to issue charitable gift annuities or charitable installment purchase agreements, which are annuities, by the Department of Commerce and Insurance.

50. On information and belief, the Commissioner asserts NFOA's entire course of conduct shows prohibited activity by the Respondents in violation of the statute, and the corporate resolution demonstrates a clear intent and willingness by NFOA to market and issue or deliver contracts of insurance as its business model, whether to residents of Tennessee, or of other states.

51. Tennessee's insurance code permits the Commissioner to use stronger measures to address the failings of a domestic company, such as NFOA, through exercise of the Commissioner's primary regulatory authority, to apply for the more extensive and exclusive regulatory and receivership remedies imposed through the Insurers Rehabilitation and Liquidation Act. Rather than just enjoining the prohibited conduct, the Commissioner is given authority to request this Court's assistance to shut down and conserve the Tennessee insurer's assets for the benefit of the public, and in appointing the Commissioner as statutory receiver for the assets and business of the insurer. Because this Defendant NFOA has operated so far outside of any regulatory authority, the Commissioner believes that to enter administrative remedies short of obtaining enforceable Court orders and injunctions (including enforceable in other states by full faith and credit being given to those orders), would pose a substantial risk of being ineffective or ignored by these Defendants, which would be more dangerous than obtaining a court order in the first instance. The Commissioner seeks the maximum control available through the issuance of this Court's orders of receivership and injunction, so as to cause an effective termination of all NFOA's business activities, and an effective freeze to control its assets, records and accounts under the Commissioner.

52. Similarly, the proceedings of IRLA "may be applied to (1) All insurers who are doing, or have done, an insurance business in this state, and against whom claims arising from that business may exist now or in the future; (2) *All insurers who purport to do* any insurance business in this state; (3) All insurers who have insureds resident in this state; (4) *All other persons organized or in the process of organizing with the intent to do* an insurance business in this state." Tenn. Code Ann. § 56-9-102. Tenn. Code Ann. § 56-9-103(12) defines "insurer" as

“any person who has done, purports to do, is doing or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by, any insurance commissioner. For purposes of this chapter, any other persons included under T.C.A. § 56-9-102 are deemed to be insurers;”

53. The plain import of Tennessee insurance law, and IRLA, is to afford the Commissioner authority to seek receivership of unauthorized insurers, and would-be insurers, and persons who do not even call themselves insurers, if they are in fact substantively doing, set up to do, or about do an insurance business in this State. This statute clearly covers insurers that are both doing, or are in the process of doing the insurance business. The Commissioner need not wait for a large market penetration into Tennessee, or multiple unlawful contracts to be consummated, such as NFOA has done to harm other states' residents through unlicensed issuance of insurance there, to stop this unlawful insurance business conclusively with an insurer receivership in Tennessee.

NFOA'S INSTALLMENT AGREEMENT IS AN ANNUITY, A FORM OF
INSURANCE TO BE LICENSED IN TENNESSEE

54. NFOA is collecting assets in exchange for the issuance of the “Installment Plan Agreement” contracts, and these assets are alleged according to NFOA's contracts, to be transferred to NFOA to assure NFOA “absolute, unencumbered title to the Assets.” NFOA's obligations under the contracts are solely to make payments to the Owner who originally owned the assets before the transfer, through installment payments in any quantity filled in on the contract, or to any beneficiary or beneficiaries if the owner predeceases the conclusion of the installment agreement, for the exact same term. The payments are also assignable simply by

informing NFOA of the name, address, phone number and social security numbers of the assignees. These payments are stated to be the obligation of NFOA to pay, which means out of the general assets of NFOA. NFOA variously refers to this contract as an Installment Plan, or as an "Installment Bargain Sale." The affidavit of Brian Hoffmeister, Exhibit D, supra, listed the factors making NFOA an annuity recognizable as having the features of policies submitted by other licensed life insurers.

55. An annuity is not defined per se in Tennessee law but clearly is required to be licensed as insurance in Tennessee. NFOA does not qualify for an insurance license. NFOA's contract states it is to be governed by Tennessee law. Annuities are recognized as policies under IRLA and the insurance code elsewhere. The provision of the Tennessee Insurance Code that defines the types of insurance and generally the scope of certain licensed lines of insurance is Tenn. Code Ann. § 56-2-201, and certain sections following it: "'Life Insurance' means insurance on human lives and insurance appertaining thereto or connected therewith. For the purposes of this code, the transacting of life insurance includes the granting of annuities and endowment benefits, . . ." Tenn. Code Ann. § 56-2-201(4). Tenn. Code Ann. § 56-2-203 states: "The company has the further right to insure the lives of persons, and engage in the general business of life insurance; and, coupled with that right, the right to grant and sell annuity, or contract loans based on life annuity, with benefit of survivorship, and accept and execute all legal trusts which may be confided to it." Insurers may exercise one or more or all of the branches of business in which it is authorized to engage. Tenn. Code Ann. § 56-2-205. Thus, life insurers are empowered to grant and sell annuity products in connection with the authority to be a life insurer.

56. Annuity is defined in Black's Law Dictionary as "a right to receive, fixed, periodic payments, either for life or for a term of years. . . . A fixed sum payable to a person at specific intervals for a specific period of time or for life." "Annuity certain" is defined as "payable for specified period; no matter the time of death of the annuitant" whereas "deferred annuity" means "payments begin at some specified future date provided the beneficiary is alive at such date." Black's Law Dictionary, 5th ed. (1979).

57. Just one of many consequences of being licensed as a life insurer is the restriction on investments of assets. The Tennessee statutes governing domestic life insurance companies severely restrict the use and investment of its assets (See Tenn. Code Ann. § 56-3-301 - 305) with the underlying purpose of protecting the policyholders, just as the statutes and regulations governing banks are designed to protect depositors. *Continental Bankers Life Ins. Co. v. Bank of Alamo*, 578 S.W.2d 625 (Tenn. 1979). The company, if licensed, must meet financial requirements for reserves and capital or come within other statutory requirements. Tenn. Code Ann. § 56-1-403. NFOA has done none of this nor shown any intent to subject itself to any insurance regulatory scrutiny. Contracts of annuity are governed by provisions in Tenn. Code Ann. § 56-36-103 and other parts of that chapter.

58. Annuities are described as included in more than one line of insurance for which insurance producers must be licensed. A person shall not sell, solicit or negotiate insurance in this State for any class or classes of insurance unless the person is licensed for that line of authority in accordance with part 1 of chapter 6 of title 56. Tenn. Code Ann. § 56-6-103. Insurance in that part means any of the lines of authority in Tenn. Code Ann. § 56-2-201. (Tenn.

Code Ann. § 56-6-102(5)). A resident insurance producer may receive a license in the lines of Life and/or Variable life and variable annuity products. Tenn. Code Ann. § 56-6-107.

59. As indicated by the affidavit of Mr. Hoffmeister who reviews such policies regularly, the NFOA contracts most closely track policies that are "Single Premium Deferred Annuity." Single premium deferred or non-deferred annuity policy forms are submitted to the Department regularly by licensed companies as a condition of their use of such policies in this State. The National Association of Insurance Commissioners defines an annuity contract as one where "the insurer agrees to pay the annuitant a certain sum for a specified period of time that could be a number of years or the life of the annuitant." A Regulator's Introduction to the Insurance Industry, pg. 49.⁴ Similarly, Mr. Nicholas Gerhart, with the experience and background of viewing such contracts as attorney for a licensed life insurer that issues fixed-term annuities as well as other types, concluded that the Installment Plan Agreement and surrounding materials constituted single premium term certain annuities. (See, Exhibit R, ¶14-18).

60. The Receivership Act, IRLA, recognizes annuity claims as policyholder-type claims. Tenn. Code Ann. § 56-9-330(a)(2) classifies claims under annuity policies, whether for death proceeds, annuity proceeds, or investment values, as loss claims under policies entitled to

⁴ Other states have set forth definitions of the term "annuity." For instance, the Pennsylvania Supreme Court stated, "'[a]nnuity' is a term somewhat loosely used in financial and legal nomenclature and is perhaps incapable of exact definition. Generally speaking, it designates a right-bequeathed, donated or purchased-to receive fixed, periodical payments, either for life or a number of years. Its determining characteristic is that the annuitant has an interest only in the payments themselves and not in any principal fund or source from which they may be derived. *The purchaser of an annuity surrenders all right and title in and to the money he pays for it.* On the other hand, where a debtor agrees to pay his creditor in installments at regular intervals, the debt or principal sum itself is due to the creditor although payable only in the manner agreed upon; it is an account receivable in which he has a property interest. Therefore, installment payments of a debt, or payments of interest on a debt, do not constitute an annuity. *Commonwealth v. Beisel*, 338 Pa. 519, at 521, 13 A.2d 419, at 420-421 (Pa.1940).

Class 2 priority in the liquidation of an insurer. Class 2 is the priority given claims by policyholders and others under their insurance policies. (Class 5 contains a reference to another type of non-individual annuity which is not applicable here).

61. In light of the substantial regulatory scheme afforded life insurers that issue annuity contracts of various types, NFOA's business of selling annuity contracts without any required licensure or even contact with the Tennessee Department of Commerce and Insurance is presumptively harmful to its customers and the public interest. It is a business of insurance that the legislature intends to be highly supervised, and the solvency of such entities to be scrutinized and approved before conducting business and so long as it continues in this State.

62. The Affidavit of Robert Heisse, Exhibit A, also expresses facts that generate concern by the Department over the financial condition, misleading business practices and overall affairs and intent for the formation of NFOA. The Heisse Affidavit establishes that the continued operation of NFOA is and would be hazardous financially and otherwise to its policyholders, creditors and the public, that NFOA has not come into compliance with any statutes of the insurance law, and that NFOA has an unknown, unregulated, and suspected to be very poor financial condition, given the large contractual obligations it has undertaken under the Installment Contracts.

63. Due to NFOA's failure to apply for licensure of its business of issuing Installment Contracts, there has been no disclosure or approval of the qualifications or character of the management or officials of NFOA. The Commissioner has no assurance whatsoever of NFOA's soundness, the safety of its assets, or its ability to pay its obligations when due. There has been no qualification to do business, and no review of the policies or contracts for appropriate terms

required by insurance law, and no periodic filing and review of financial statements, which would be quarterly for a domestic insurance company. NFOA has not evidenced that it is investing in accordance with Tennessee life insurers' investment law.

64. Accordingly, the Commissioner has determined that NFOA's continued operation is and would be hazardous, financially and otherwise, to its policyholders, contract-holders, beneficiaries, members, its general creditors and the public. Moreover, the general public will suffer irreparable harm connected with the continuing operation of NFOA, because the representations it makes to each and every contract holder, through the contract terms, are unfounded, and individuals have experienced immediate financial consequences of the transaction to exchange an asset they already hold and thereby lose to NFOA; thus, their personal finances and tax status are affected immediately, in damaging ways that may not be capable of full reversal even if the NFOA contracts are cancelled or rescinded. Every day that NFOA operates, the customer "donors" irrevocably change their financial position and that of their existing beneficiaries in reliance on NFOA's representations. Since NFOA's tax status is not clear or as represented, the customers are exposed to the IRS possible disallowance of any tax benefits they may have claimed. This Petition cannot predict any taxation outcomes, but merely predict that great risk has been incurred by all of NFOA's clients.

65. Accordingly, the Commissioner requests formal delinquency proceedings under the Act, for the Court to appoint the Commissioner liquidator (hereinafter referred to as "Receiver") of NFOA for the purposes of liquidation as provided by Tenn. Code Ann. §§ 56-9-306, with all the powers granted to receivers by statute and this Court's orders, and to enjoin all persons described below from interfering with the conduct of the duties of the receiver as

provided by Tenn. Code Ann. § 56-9-105. Petitioner proposes, as receiver and liquidator for NFOA, to locate and marshal the assets of NFOA in order to return, insofar as possible, the monies and assets of NFOA to the customers and “donors” to NFOA. Because NFOA has no right to exist, it should be shut down and liquidated as soon as possible, and an orderly disposition of its assets and receipts should be started under the Receivership Act, rather than a run on its assets by outraged customers, and any host of lawsuits that may be filed against it. NFOA, properly viewed, may have a multitude of complaints against it, and all such complaints will compete for the same assets. A liquidation is vital to establish the orderly statutory process for dealing with its business.

LEGAL GROUNDS FOR LIQUIDATION

66. NFOA is alleged and determined by the Commissioner to be an insurer subject to the formal delinquency proceeding provisions of the Act. NFOA has conducted itself in such a way as to issue contracts that in form and substance equate annuity contracts. These contracts cannot be issued in Tennessee unless by a company with a certificate of authority from the Commissioner. It is unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this state without a certificate of authority from the Commissioner. Tenn. Code Ann. § 56-2-105. NFOA has solicited business in Tennessee and nationwide to cause members of the public to enter into what are effectively annuity contracts, even though NFOA has no license in Tennessee or anywhere in the United States as an insurer. NFOA moreover has not filed as and would not qualify to be a qualified charitable gift annuity issuer under Tenn. Code Ann. §§ 56-52-101, *et seq.*, so as to be exempted from some aspects of insurance regulation.

67. Other states have initiated proceedings to enjoin NFOA's unlicensed insurance business in those states, which is conducted from NFOA's location in Franklin, Tennessee. It has solicited contracts with persons for its unauthorized business and has incurred multimillion dollar liabilities and risks. Claims under contract against NFOA will arise for several years in the future related to payment obligations it has guaranteed to people and designated beneficiaries. The proceedings of the IRLA may be applied to all insurers who are doing, or have done, an insurance business in this state, and against whom claims arising from that business may exist now or in the future. Tenn. Code Ann. § 56-9-102(1). Tenn. Code Ann. § 56-9-103(12). These sections show that anyone doing an insurance business, whether or not licensed, is contemplated within the definition of insurer and scope of the Commissioner's authority for imposing the delinquency remedies of the Act.

68. This Liquidation petition is brought pursuant to Tenn. Code Ann. § 56-9-306 of the Act, which provides that the Commissioner may request liquidation, regardless of whether there has been any prior order directing rehabilitation of the insurer, as follows:

The commissioner may petition the chancery court of Davidson County for an order directing the commissioner to liquidate a domestic insurer or an alien insurer domiciled in this state on the basis:

- (1) Of any ground for an order of rehabilitation as specified in § 56-9-301, whether or not there has been a prior order directing the rehabilitation of the insurer;
- (2) That the insurer is insolvent; or
- (3) That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors or the public.

Tenn. Code Ann. § 56-9-306. Tenn. Code Ann. § 56-9-301 provides that the Commissioner may apply to rehabilitate (and, by virtue of Tenn. Code Ann. § 56-9-306(1), to liquidate) an insurer, if “[t]he insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors or the public.” Tenn. Code Ann. § 56-9-301(1).

69. For purposes of Tenn. Code Ann. § 56-9-306(2), an insurer is considered insolvent if:

(B) . . . it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities, plus the greater of:

- (i) Any capital and surplus required by law for its organization; or
- (ii) The total par or stated value of its authorized and issued capital stock;

(D) “liabilities” include, but are not limited to, reserves required by statute or by department general regulations or specific requirements imposed by the commissioner

Tenn. Code Ann. § 56-9-103(11).

70. Although the Commissioner exercised examination powers to obtain certain contract records at NFOA, the Commissioner has been in no position to obtain the kind of information about NFOA’s financial condition, and total admitted assets and total liabilities, that would occur under regulatory accounting, and regular filings of financial statements according to the highly detailed rules and statutes for measuring assets and liabilities of such entities.

Consequently the Commissioner cannot determine whether NFOA is insolvent without direct access to all of NFOA’s accounts and records, with time to analyze this information. Due to the expenses shown in the Heisse affidavit for commissions, surrender fees, overhead, and the like,

NFOA likely retains much fewer assets and investments than its obligation to customers. This is especially true if they want their money back.

71. The Commissioner is informed and believes, based on a tally of the contractual obligations of NFOA by investigator Heisse from NFOA's contracts as of April 20, 2007, that NFOA has taken in contract assets of \$31.2 million, that its future obligations (expressed in future dollars) are about \$41.9 million, and, as had been noted in the Heisse Affidavit, that its cash assets as of March 31, 2007, were less than \$14 million. *See* Affidavit of Mark E. Jaquish, CFE, CPA, Receivership Director and a former Examiner-in-Charge for the Department of Commerce and Insurance performing insurance company examinations, Exhibit S, hereto. Even with a lag time to receive payments, NFOA's financial resources are greatly reduced from the amounts attributed to clients' contributions. The obligations for its reserves have not been measured according to any standard valuation law; accordingly whether NFOA is in fact also insolvent is unknown. However, Mr. Jaquish performed an analysis of NFOA's required future installment payments to calculate how much money NFOA would currently need to service all required future installments, assuming the average yield on their investment portfolio was 5.44%, the average of that of the three largest licensed insurance company writers of annuities. At that rate, NFOA would need approximately \$23.5 million invested today to be able to service all 233 contracts reported sold through April 12, 2007. Jaquish, ¶¶3-4. So many of NFOA's contracts are deferred for many years, that NFOA's ultimate inability to pay its obligations would not be noticed for some time. Moreover, the analysis of the future payment liability presumes that customers actually want these NFOA contracts as worded, a matter in substantial doubt based on all of the facts gathered about its marketing practices.

72. Moreover, the relevant statutory ground for a liquidation receivership, that NFOA be hazardous financially, or otherwise, to others, does not require that NFOA be known with certainty to be insolvent. Rather, the Commissioner deems that the creditors and policyholders and the public have already been exposed to personal financial hazard in the tax benefit representations of NFOA and the fact that people have changed their position and placed confidence in the future solvency and good faith of an unregulated insurance business. When a financial business ordinarily requiring regulation incurs future obligations to members of the public, the legislature has presumed the public is exposed to clear risk when the business is not licensed. It need not already have stopped paying all its claims, or experience financial crisis before the Commissioner may take action for the protection of members, covered member employees, and other creditors. The purposes of the Act, as set forth in Tenn. Code Ann. § 56-9-101(d), include "Early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures." The prerogative of NFOA's management to keep operating without regulation is non-existent. Thus, there is no requirement that the Commissioner wait until NFOA actually stops paying its debts and contractual obligations before she is empowered to act to avoid the prospective financial hazard to enrollees, providers and other creditors.

73. Pursuant to Tenn. Code Ann. § 56-9-133, this Verified Petition and exhibits filed thereto shall be received as *prima facie* evidence of the facts contained herein.

FEATURES OF LIQUIDATION RECEIVERSHIP

74. A liquidation imposes an orderly process to close out the business of NFOA, and will permit the receiver to marshal the assets that are or should be found on behalf of the

creditors as a whole, attempt recoveries of any missing assets, and to conclude all claims against this insurer. Liquidation, by force of law, requires that all contracts, (including annuities not covered by a guaranty association, the situation here) continue in force no longer than 30 days after entry of the order of liquidation, if not shorter. Tenn. Code Ann. § 56-9-308(a). All of the rights and liabilities of the insurer are fixed at the entry of the order of liquidation, except as provided in Tenn. Code Ann. § 56-9-308 and 56-9-326 (third party actions). Tenn. Code Ann. § 56-9-307(b). The State also requests an injunction against suits and other acts that could interfere with the efforts of the receiver, injunctions against all activities that violate Tennessee insurance and securities law, and mandatory cooperation of all persons, agents, service companies, administrators and entities that have been carrying out the business of NFOA as set out in the liquidation statutes.

75. **Management and Possession of NFOA and its Business Premises.** When a liquidator is appointed pursuant to Tenn. Code Ann. § 56-9-306, several statutory powers flow from that order under the Act. The order to liquidate the insurer directs the Commissioner, as Liquidator, immediately to take possession of its assets, and vests title to all assets in the Liquidator. Tenn. Code Ann. § 56-9-307(a). Upon issuance of the order to liquidate, the rights and liabilities of any such insurer, its creditors, policyholders, shareholders and members and all other persons interested in its estate shall become fixed as of the date of entry of the order. Tenn. Code Ann. § 56-9-307(b). The liquidator is to occupy and control the premises used for the insurer's business. NFOA's use of the Olives' personal residence as its main office (one of two) complicates the occupation of NFOA's business premises and retrieval of all its records and assets. This situation requires that the Olives relinquish all assets, information and records that

may reside among their personal effects, and that the receiver have immediate access and opportunity to examine, inventory and retain items that have been used for the business purposes or which have been involved in any way in connection with NFOA or the disposition of assets derived from NFOA.

76. **Injunctive Relief.** The Commissioner, as Liquidator, has the ability to apply for restraining orders, temporary and permanent injunctions under Tenn. Code Ann. § 56-9-105 to prevent transaction of the insurer's business, transfer of property, interference, waste of assets, destruction of records or data, or continuation or initiation of a number of types of actions against the insurer or its policyholders or enrollees. The Commissioner requests such injunctions against institution of any action against NFOA for the protection of NFOA's policyholders and insureds upon the appointment of a receiver, all as more fully set forth in the Order terms in the prayer for relief hereto. Additionally, Tenn. Code Ann. § 56-9-313 provides that upon issuance of an order appointing a liquidator of a domestic insurer,

no action at law or equity or in arbitration shall be brought against the insurer or liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such order.

Finally, under Tenn. Code Ann. § 56-9-106, all persons who have been performing or are concerned in any way with the affairs of NFOA are required to cooperate with the Liquidator. This includes Respondents Olives, Respondent Kenny Marks, any insurance agents or other agents selling this product to the public, or soliciting business in any way, including but not limited to McIntyre, Little, and Daniel, and any persons or financial institutions controlling or with access to the assets that NFOA has amassed for this business.

77. **Avoidance Powers.** The filing of a petition for liquidation affords statutory remedies upon the entry of an order of liquidation that enable the Liquidator to avoid preferential, fraudulent and certain other financial transfers prior to the filing date of the petition. These statutory powers, found at Tenn. Code Ann. §§ 56-9-315, 316 and 317, are desirable because they increase the possible available funds for the benefit of the liquidating insurer's policyholders and creditors.

CONCLUSION

78. Based on all the foregoing facts, reasons, and the law, the Commissioner submits that circumstances support entry of an order of liquidation.

EXPEDITED HEARING REQUEST

79. Furthermore, the Commissioner submits that NFOA and other Respondents should be required to respond promptly to this Petition, and that a hearing on this Petition should be granted promptly because of the Commissioner's immediate need for the statutory powers of a Receiver. The Petitioner requests this Court to set a prompt hearing date on this Petition with an expedited date for the Respondents to file any objection and that notice of such hearing and response date be contained in a Proposed Order Setting Hearing, (filed herewith) to be served on the parties and other interested persons at which time the Liquidation Order will be considered. Due to the exigent circumstance of illegality of operations which need to be stopped forthwith, and NFOA's relatively unknown financial status, there is no just cause to delay the consideration of receivership.

WHEREFORE, premises considered, Petitioner prays as follows:

A. That this Court enter its Order finding that NFOA is an unauthorized insurer in Tennessee violating Tenn. Code Ann. § 56-2-105 and an insurer subject to the Insurers Rehabilitation and Liquidation Act, and that its continuing operation would be hazardous financially and otherwise to its policyholders, its creditors and the public;

B. That this Court find that individual Respondents have been conducting and promoting the sale of unauthorized insurance contracts by NFOA, and have acted, in the case of Respondents Richard Olive, Susan Olive, Breanna McIntyre, Kenny Marks and Hunter Daniel without licenses as an insurance producer, and that all Respondents should be ordered enjoined from any further acts of any nature in connection with contracts of unauthorized insurance business in violation of Tennessee law.

C. That an Order Appointing the Commissioner and her successors in office as Liquidator of Respondent National Foundation of America, with appropriate injunctive and mandatory relief as to Respondents and Defendants, be entered with substantially the following terms:

1. The Commissioner of Commerce and Insurance for the State of Tennessee, Leslie A. Newman, in her official capacity or her successors in office, is appointed Liquidator of **NATIONAL FOUNDATION OF AMERICA**, a Tennessee corporation that was operating an illegal insurer, ("NFOA" "Respondent" or "insurer") for purposes of liquidation as provided by Tenn. Code Ann. §§ 56-9-306, and 307, with all the powers conferred by law on receivers and liquidators of insurers appointed under those statutes. In addition to those powers specifically enumerated in this Final Order of Liquidation and by operation of law under Tenn. Code Ann. §§ 56-9-101, *et seq.*, for liquidators of insurers, the Liquidator shall have the power to exercise all powers now held or hereafter conferred upon

receivers by the laws of this State not inconsistent with Tenn. Code Ann. §§ 56-9-101, *et seq.*;

2. Pursuant to Tenn. Code Ann. § 56-9-307, the Commissioner, as Liquidator, is authorized and directed forthwith (1) to take possession of all accounts, assets, monies, and property (both tangible and intangible) belonging to, held by and/or in the name of **National Foundation of America**, both within and without the State of Tennessee, (2) to be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the accounts, assets, monies, books and records of the insurer, wherever located, as of the date of entry of the liquidation order, and any further title or rights in property gained by the Commissioner by virtue of such receivership, and (3) to have the right to recover the same and reduce the same to possession and to administer them under the general supervision of the Court with all the powers granted a Liquidator and receivers under Tenn. Code Ann. §§ 56-9-101, *et seq.* The Commissioner shall have immediate access to and shall occupy and control the premises and all records, databases, and computer files used to carry out the business of NFOA, regardless of their location and possession;

3. Any bank, savings and loan association, financial institution or other person, which has on deposit, in its possession, custody or control any funds, accounts and any other assets of NFOA, including financial institution accounts held in the name of other account holders, including but not limited to the following financial institutions, Wachovia Bank, NA, Royal Oaks location at Franklin, TN, SEI Investments Co., Oaks, Pennsylvania (and its wholly owned subsidiary, SEI Private Trust Co., Oaks, PA), Stonebridge Investment Counsel, Inc., Brentwood, Tennessee (attn: Mitchell S. Martin, III), shall immediately transfer title, custody and control of all such funds, accounts, or assets to the Liquidator, and are hereby instructed that the Liquidator has absolute control over such funds, accounts and other assets. The Liquidator may change the name of such accounts and other assets, withdraw them from such bank, savings and loan association or other financial institution, or take any lesser action necessary for the proper conduct of this receivership. No bank, savings and loan association or other financial institution shall exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the Liquidator's control without the permission of this Court;

4. Pursuant to Tenn. Code Ann. § 56-9-307, the rights and liabilities of NFOA and of its creditors, policyholders, shareholders, members and all other persons interested in its estate shall become fixed as of the date of the entry of this Order of Liquidation, except as provided in Tenn. Code Ann. §§ 56-9-308 and 326;

5. Pursuant to Tenn. Code Ann. § 56-9-308, all policies, including bonds and other noncancellable business, in effect at the time of issuance of this Order of Liquidation shall continue in force only for the lesser of: (1) a period of thirty (30) days after the date of entry of the Order of Liquidation, (2) the expiration of the policy coverage; (3) the date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy, (4) the liquidator has effected a transfer of the policy obligation pursuant to Tenn. Code Ann. § 56-9-310(a)(10), or, (5) the date proposed by the liquidator and approved by the Court to cancel coverage;
6. This Order of Liquidation shall terminate coverage at the time specified in Tenn. Code Ann. § 56-9-308(a) for purposes of any other statute;
7. The Liquidator shall have all the powers enumerated in Tenn. Code Ann. § 56-9-310, including the power to appoint a special deputy or deputies to act for her and to determine their reasonable compensation. The special deputy shall have all powers of the Liquidator as granted by this Order and as enumerated in Tenn. Code Ann. § 56-9-310. The special deputy shall serve at the pleasure of the Liquidator;
8. The Liquidator shall have the power to employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants and such other personnel as the Liquidator may deem necessary to assist in the liquidation;
9. The Liquidator shall have the power to fix reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants with the approval of the Court, and shall have power to pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer;
10. The Liquidator shall have the power to hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to his or her testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records or other documents which he deems relevant to the inquiry;
11. The Liquidator shall have the power to audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer;

12. The Liquidator shall have the power to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. The Liquidator shall also have power to execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;
13. The Liquidator shall have the power to enter into such contracts as are necessary to carry out the Order of Liquidation, and to affirm or disavow any contracts to which the insurer is a party;
14. The Liquidator shall have the power to continue to prosecute and to institute in the name of the insurer or in the Liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the Liquidator deems unprofitable to pursue further;
15. The Liquidator shall have the power to prosecute any action at law or in equity which may exist on the Liquidator's behalf, and/or on behalf of the creditors, members, policyholders or shareholders of the insurer against any person or entity. Pursuant to Tenn. Code Ann. § 56-9-313(b)(1), the Liquidator may, within two (2) years or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the instant petition for liquidation;
16. The Liquidator shall have the power to remove any or all records and property of the insurer to the offices of the Commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation;
17. The Liquidator shall have the power under Tenn. Code Ann. §§ 56-9-315, 316, and 317 to avoid fraudulent and preferential transfers;
18. The enumeration of the powers and authority of the Liquidator shall not be construed as a limitation upon the Commissioner or Special Deputy, nor shall it exclude in any manner any right to do such other acts not herein specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation;
19. Notice. The Liquidator shall give or cause to be given notice of the Order of Liquidation in accordance with Tenn. Code Ann. § 56-9-311 as soon as possible: (1) by first class mail and either by telegram or telephone to the

insurance commissioner of each jurisdiction in which the insurer is doing business; (2) by first class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of liquidation, if any; (3) by first class mail to all insurance agents of the insurer; (4) by first class mail to all persons known or reasonably expected to have claims against the insurer including all policyholders, at their last known address as indicated by the records of the insurer; and (5) by publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate;

20. **Claims Deadline** - Except as otherwise established by the Liquidator with approval of the Court, notice to potential claimants under Tenn. Code Ann. § 56-9-311(a) shall specify in the notice and require claimants to file with the Liquidator their claims together with proper proofs thereof under Tenn. Code Ann. § 56-9-324, on or before 4:30 p.m., Central Time, _____ (or other date approved by the court), for purposes of participating in any distribution of assets that may be made on timely filed claims that are allowed in these proceedings;

21. Any special procedures for the Liquidator's recognition of claims by persons appearing from the records of NFOA to be creditors or claimants of NFOA, for purposes of filing their proofs of claim under Tenn. Code Ann. § 56-9-324 shall be submitted by the Liquidator to the Court for approval.

22. With notice given in accordance with Tenn. Code Ann. § 56-9-311, the distribution of assets of the insurer under Tenn. Code Ann. §§ 56-9-101, et seq. shall be conclusive with respect to all claimants, whether or not they receive notice;

23. **Protection from Suit.** Pursuant to Tenn. Code Ann. § 56-9-313, no action at law or equity or in arbitration shall be brought against the insurer or Liquidator, whether in Tennessee or elsewhere, nor shall any such existing actions be maintained or further presented or prosecuted after issuance of the Order of Liquidation. All claims must be submitted through the claims process as set forth in the Act, and as further defined in this Order. Whenever, in the Liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the Liquidator may intervene in the action. The Liquidator may defend any action in which the Liquidator intervenes under this section at the expense of the estate of the insurer;

INJUNCTIONS AND COOPERATION

24. **Injunctions.** Pursuant to Tenn. Code Ann. § 56-9-105(a)(1-11), all persons, firms, corporations and associations, including, but not limited to, Respondent NFOA and its officers, directors, members, subscribers, agents, attorneys, accountants, contractors, subcontractors and all other persons with authority over or in charge of any segment of NFOA's affairs, including, without prejudice to the generality, Respondents Richard Olive, Susan Olive, Breanna McIntyre, Kenny Marks, and any sales agents or representatives, Theodore S. Little, Hunter Daniel, any claims administrators past and present, and any others acting in concert with or on behalf of NFOA, are prohibited and permanently enjoined from:

- (1) the transaction of NFOA's business, except as to those activities as may be expressly authorized in writing by the Liquidator to aid in the liquidation,
- (2) the waste or disposition of its property,
- (3) the destruction, deletion, modification, concealment or waste of its records, databases or computer files,
- (4) the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof until further order of this Court, and
- (5) any other threatened or contemplated action, not permitted under the Act, that might lessen the value of the insurer's assets or prejudice the rights of policyholders, enrollees, creditors or shareholders, or the administration of any proceeding under the Act;

and this Court further authorizes the Liquidator to apply outside of Tennessee for the relief described in Tenn. Code Ann. § 56-9-105(a);

25. **Cooperation.** Pursuant to Tenn. Code Ann. § 56-9-106, the officers, managers, directors, trustees, owners, employees, agents, attorneys, accountants, contractors or subcontractors of NFOA, and any other persons with authority over or in charge of any segment of NFOA's affairs and its agents, employees, contractors and subcontractors, including, without prejudice to the generality, Respondents Richard Olive, Susan Olive, Breanna McIntyre, Kenny Marks, any of its sales force, agents or representatives, Theodore S. Little, Hunter Daniel, as well as Stonebridge Investment Counsel, Inc., Brentwood, Tennessee (attn: Mitchell S. Martin, III), SEI Investments Co., Oaks, Pennsylvania (and its wholly owned subsidiary, SEI Private Trust Co., Oaks, PA), and Wachovia Bank, NA (Royal Oaks location at Franklin, TN) and any others, are ordered and required to cooperate with the Commissioner in the carrying out of the liquidation. The term "person" shall include any person who exercises control directly or indirectly over activities of the NFOA. Further, the term "person" shall include any person who exercises control or who participates in the activities of the NFOA, including through the record-keeping, claims administration and adjustment, financial management, payments, and computer systems operation relating to the activities

of the NFOA. "To cooperate" shall include, but shall not be limited to, the following: (1) to reply promptly in writing to any inquiry from the Commissioner requesting such a reply; and (2) to preserve and to make available to the Commissioner any and all books, bank and investment accounts, pension accounts, documents, or other records or information or computer programs and databases or property of or pertaining to NFOA wheresoever located and in his or her possession, custody or control. No person shall obstruct or interfere with the Commissioner in the conduct of this liquidation;

26. Pursuant to Tenn. Code Ann. § 56-9-307(e), the Liquidator shall make financial reports to the Court, which shall be filed within one (1) year of the Order of Liquidation, and at least annually thereafter. Financial reports shall include the assets and liabilities of the insurer and all funds received or disbursed by the Liquidator during the current period;

27. Any person, firm, corporation or other entity having notice of this Order that fails to abide by its terms shall be directed to appear before this Court to show good cause, if any they may have, as to why they should not be held in contempt of Court for violation of the provisions of this Order;

28. No bond is required of the Commissioner as a prerequisite for the filing of this petition or entry of this liquidation order or for the issuance of any injunction, restraining order, or additional order issued as provided by Tenn. Code Ann. § 20-13-101;

29. The Commissioner may apply to the Court for any further orders and injunctive relief which may be necessary to implement the terms of this order, or in aid thereof, to which the Commissioner may be entitled. This Court retains jurisdiction for the purpose of granting such further relief as from time to time shall be deemed appropriate; and,

30. That this Liquidation Order is permanent and a final order and entitled to full faith and credit, pursuant to U.S. Const. Art. IV, § 1 and 28 U.S.C. § 1738, in the state and federal courts of each of the United States.

D. That Respondents be required to file a response to this Petition, that summons issue to Respondent, and that an appropriate early hearing date be scheduled for this Petition pursuant to the proposed Order Setting Hearing, that will consider whether to grant this Petition

with sufficient time for mailing notice and serving the petition and hearing order on all Respondents, as set forth in the service-list attached.

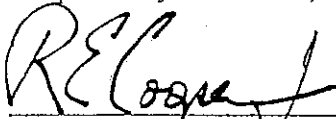
E. That the filing of this Petition and any requested Order be entered without cost bond as provided by Tenn. Code Ann. § 20-13-101;

F. For any such other relief as is appropriate.

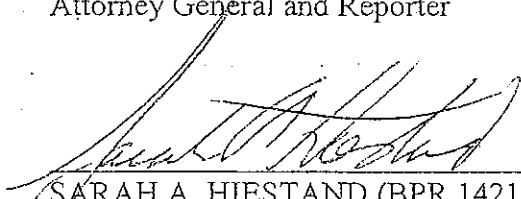
G. That Petitioner be permitted to amend this Petition and the relief sought herein, to accord with the proof if needed to effectuate complete relief for the circumstances shown to the Court. Such amendment may contemplate additional or alternative grounds for injunctive and permanent relief for other violations of the Tennessee code by Respondents, including but not limited to the Tennessee Securities Act of 1980.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS LIQUIDATION PROCEEDING.

Respectfully submitted,



ROBERT E. COOPER, JR. (BPR 10934)
Attorney General and Reporter



SARAH A. HIESTAND (BPR 14217)
Senior Counsel, Financial Division
Office of the Attorney General
P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 741-6035 fax 532-8223

107309

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

LESLIE A. NEWMAN,)
Commissioner of Commerce and Insurance)
for the State of Tennessee,)

Petitioner,)

v.)

No. _____

NATIONAL FOUNDATION OF)
AMERICA, a Tennessee corporation,)
RICHARD K. OLIVE, an individual;)
SUSAN L. OLIVE, an individual;)
BREANNA MCINTYRE, an individual,)
KENNY M. MARKS, an individual,)
THEODORE S. LITTLE, an individual,)
HUNTER DANIEL, an individual,)

Respondents.)

VERIFICATION

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

1. I, Leslie A. Newman, am the duly appointed Commissioner of Commerce and Insurance for the State of Tennessee.

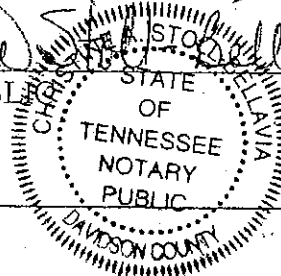
2. I have read the foregoing Verified Petition for Appointment of Receiver for Purposes of Liquidation and Injunction and swear that the information contained therein is true and correct to the best of my knowledge, information and belief.

Leslie A. Newman
LESLIE A. NEWMAN
Commissioner of Commerce and Insurance
for the State of Tennessee

SWORN TO AND SUBSCRIBED before me on this 22nd day of May, 2007.

My Commission Expires: 09/25/2010

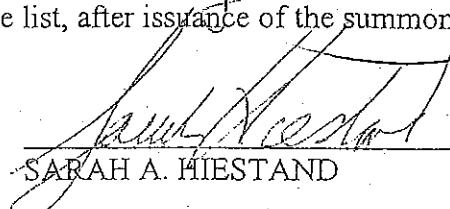
NOTARY PUBLIC



Petition for Liquidation of National Foundation of America

CERTIFICATE OF SERVICE

I hereby certify, this 23 day of May 2007, that the Petition and all attachments thereto will be served by U.S. mail, postage prepaid, to the parties and interested entities listed on the attached service list, after issuance of the summons in this case.



SARAH A. HIESTAND

SERVICE LIST

National Foundation of America
1308 Buckingham Circle
Franklin, TN 37064

NFOA fax 615-791-8624, phone 615-791-8690

David H. King, Esq.
King, Turnbow & Brisby
203 Third Ave. S
Franklin, TN 37064-2504

615-794-5555, fax 615-794-7637

Richard K. Olive
1308 Buckingham Circle
Franklin, TN 37064

Susan L. Olive
1308 Buckingham Circle
Franklin, TN 37064

Breanna McIntyre
1308 Buckinham Circle
Franklin, TN 37064

Kenny M. Marks
1308 Buckingham Circle
Franklin, TN 37064

Kenny M. Marks
439 Essex Park Circle
Franklin, TN 37069

Theodore Stamps Little
7345 Hunting Camp Road
Fairview, TN 37062

Hunter B. Daniel, Jr.
1705 Big Cove Rd. SE
Huntsville, AL 35801-2119

INDEX OF EXHIBITS SUPPORTING PETITION FOR LIQUIDATION

Exhibit A - Affidavit of Robert Heisse, Fraud Investigator, Insurance Division,
Tennessee Department of Commerce and Insurance

Attachments to Heisse Affidavit:

Exhibit A - Tenn. Dept. of C&I Subpoena Duces Tecum to Richard Olive
Exhibit B - Corporate certification re National Foundation of America from
Tennessee Secretary of State's Office
Exhibit C - Documents filed by NFOA with Tenn. Secretary of State's
Division of Charitable Solicitations and Gaming
Exhibit D - Printout of NFOA's website as of 10/12/06
Exhibit D-2 Printout of NFOA's website as of 5/17/07
Exhibit E-1 Postcards used to market NFOA stating, in part: "Exchange a
client's indexed annuity for a new annuity ..."
Exhibit E-2 NFOA advertisement from Broker World magazine stating, in part:
"Exchange a client's indexed annuity for a new contract ..."
Exhibit F - Letter from IRS to Tenn. Dept. of C&I dated May 4, 2007
Exhibit G - NFOA Press Release dated February 6, 2007
Exhibit H - NFOA Installment Plan Agreement (Edna Y. Bishop)
Exhibit I - Spreadsheet - NFOA Contract Summary
Exhibit J-1 Consolidated Statement from Wachovia Bank for 3/1/07 - 3/30/07
Exhibit J-2 Consolidated Statement of Value, March 1, 2007 - March 31, 2007
from SEI, 1 Freedom Valley Drive, Oaks, PA
Exhibit J-3 Statement of Value and Activity, March 1, 2007 - March 31, 2007
from SEI, 1 Freedom Valley Drive, Oaks, PA
Exhibit J-4 Consolidated Statement of Value, March 1, 2007 - March 31, 2007
from SEI, 1 Freedom Valley Drive, Oaks, PA
Exhibit K - NFOA brochure, Planning Your Legacy

Exhibit B - Affidavit of Robert Ribe, Chief Analyst, Insurance Analysis Section, Ins. Div.,
Tenn. Dept. of C&I

Exhibit C - Affidavit of Brenda Sechler, Agent Licensing Director, Ins. Div.,
Tenn. Dept. of C&I

Exhibit C-1 Supplemental Affidavit of Brenda Sechler

Exhibit D - Affidavit of Brian Hoffmeister, Life Compliance Analyst, Actuarial Services
Section, Ins. Div., Tenn. Dept. Of C&I

Exhibit E - Affidavit of Dale Clements, Chief of Enforcement, Securities Div.,
Tenn. Dept. of C&I

- Exhibit F - Printouts from NFOA website made 5/19/07 (Welcome Video, Securities Video, Annuities Video and Real Estate Video)
- Exhibit G - Affidavit of Melba Prosser, Nashville, Tennessee
- Exhibit H - Affidavit of Imogene C. May, Kingston, Tennessee
- Exhibit I - Affidavit of Robert J. Sweigert, Columbia, Tennessee
- Exhibit J - Letter from IRS to Texas Dept. of Insurance dated May 17, 2007
- Exhibit K - State of Washington, Office of Ins. Commissioner, Order to Cease and Desist
- Exhibit L - State of Florida, Office of Ins. Regulation, Immediate Final Order
- Exhibit L-1- Notice of Administrative Appeal filed with Fla. Office of Ins. Regulation
- Exhibit L-2- State of Florida, Dept. of Financial Services, Administrative Complaint against Robert G. Dewald re NFOA activities
- Exhibit M- State of Iowa, Ins. Commissioner, Cease and Desist Order
- Exhibit M-1- Request for Contested Case Hearing filed with Iowa Insurance Division
- Exhibit N - State of Texas, Securities Commissioner, Emergency Cease and Desist Order
- Exhibit N-1 - State of Alabama, Alabama Securities Commission, Cease and Desist Order
- Exhibit O - Affidavit of Kimberly Brown, Investigator, State of Florida, Dept. of Financial Services, Division of Agents and Agency Services, Bureau of Investigations
- Exhibit P - Affidavit of Robert Koppin, Attorney, Iowa Insurance Division, Market Regulation Bureau
- Exhibit Q - Affidavit of Joni Knapp, Client Service Administrator for American Equity Investment Life Insurance Company.
- Exhibit R - Affidavit of Nicholas C. Gerhart, Vice President and Associate General Counsel for American Equity Investment Life Insurance Company
- Exhibit S - Affidavit of Mark E. Jaquish, CFE, CPA, Tennessee Department of Commerce and Insurance, Receivership Director